IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 8157 of 1993

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SHREEPALNAGAR CO.OP.HSG.SOC. LTD - Petitioner(s)
Versus
SPECIAL SECRETARY(APPEALS) & 2 - Respondent(s)

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Appearance :
MR RJ OZA for Petitioner(s) : 1,
Mr. Dipen Desai, AGP for Respondent(s) : 1 - 3.

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH
Date : 23/06/2006

ORAL JUDGMENT

By way of this petition under Article 226/227 of the Constitution of India, the petitioner society has challenged the legality and validity of the order passed by the Deputy

Secretary (Appeals), Revenue Department, State of Gujarat, dated 5.4.1993 in Revision Application SRD No.1 of 1990 in dismissing the same and confirming the order dated 14.7.1990 passed by the Collector, Banaskantha, by which the Collector has directed to move the Jain Derasar (Temple) which was alleged to have been constructed on the common open plot.

2. It is the contention on behalf of the petitioner that, though while passing the impugned order dated 14.7.1990 the Collector has relied upon the report dated 16.12.1989 submitted by the Deputy Collector, Palanpur, a copy of the same was not given to the petitioner to controvert the same, and though a specific contention was raised before the Deputy Secretary (Appeals) the same has not been considered by the Deputy Secretary (Appeals). It is therefore submitted that the order passed by the Collector, Banaskantha, is in breach of principles of

natural justice to that extent. It is submitted by Shri RJ Oza, learned advocate on behalf of the petitioner that even as per the Non-agricultural Use Permission granted by the District Development Officer, a common open plot was required to be kept to the extent of minimum 400 sq.yds., and maximum 2000 sq.yards, and even after constructing the Temple which is on 900 sq.ft. [90 sq.yds.] the permissible limit of keeping common open plot is maintained.

3. Shri Dipen Desai, learned AGP, appearing on behalf of the respondents, while supporting the order passed by both the authorities, has submitted that as the construction of the Temple was found to be in the common open plot which was in breach of the conditions of the order passed by the District Development Officer while granting N.A. Use permission and therefore it is requested to dismiss the present Special Civil Application.

4. Heard the learned advocates appearing for the parties. It is not in dispute that while passing the impugned order dated 14.7.1990, the Collector, Banaskantha has relied upon the report submitted by the Deputy Collector, Palanpur, dated 16.12.1989, but nothing is on record to show that a copy of the said report was supplied to the petitioner to controvert the same. It appears that, though a specific contention was raised with regard to non-supply of the aforesaid report, the Deputy Secretary (Appeals) in his aforesaid order has not dealt with the same. Under the circumstances, the impugned order passed by the Collector, Banaskantha, dated 14.7.1990 is in breach of principles of natural justice. It is also required to be noted that it is the contention on behalf of the petitioner Society that while putting up construction of Jain Temple approximately in the area of 900 sq.ft. (90 yards), the permissible limit of keeping common open plot will be maintained.

This aspect has also not been considered by the Collector, Banaskantha. The matter is, therefore, required to be remanded to the Collector, Banaskantha for passing appropriate order in accordance with law and on merits after considering the aforesaid aspect of keeping a common open plot within the permissible limit even after constructing the Jain Temple and after supplying the copy of the Report of the Deputy Collector, Palanpur, dated 16.12.1989.

5. For the reasons stated above, the petition succeeds. The impugned order dated 14.7.1990 passed by the Collector, Banaskantha and the order passed by the Deputy Secretary, Legal Department, State of Gujarat, dated 5.4.1993 in Revision Application SRD No.1 of 1990 are quashed and set aside. The matter is remanded to the Collector, Banaskantha, for passing appropriate order in accordance with law and on merits as stated above after giving opportunity to all the concerned parties

inclusive of the Society who had earlier made a complaint. Such exercise to be completed within the period of 6 months from the date of receipt of this order. Until then, the parties are directed to main status-quo. Rule is made absolute with no order as to costs.

[M.R. Shah, J.]

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